

(viii) Metered-dose ipratropium bromide and albuterol sulfate, in combination, administered by oral inhalation for human use.

(ix) Sterile aerosol talc administered intrapleurally by thoracoscopy for human use.

(f) Any person may file a petition under part 10 of this chapter to request that FDA initiate rulemaking to amend paragraph (e) of this section to add an essential use. FDA may initiate notice-and-comment rulemaking to add an essential use on its own initiative or in response to a petition, if granted.

(1) If the petition is to add use of a noninvestigational product, the petitioner must submit compelling evidence that:

(i) Substantial technical barriers exist to formulating the product without ODSs;

(ii) The product will provide an unavailable important public health benefit; and

(iii) Use of the product does not release cumulatively significant amounts of ODSs into the atmosphere or the release is warranted in view of the unavailable important public health benefit.

(2) If the petition is to add use of an investigational product, the petitioner must submit compelling evidence that:

(i) Substantial technical barriers exist to formulating the investigational product without ODSs;

(ii) A high probability exists that the investigational product will provide an unavailable important public health benefit; and

(iii) Use of the investigational product does not release cumulatively significant amounts of ODSs into the atmosphere or the release is warranted in view of the high probability of an unavailable important public health benefit.

(g) Any person may file a petition under part 10 of this chapter to request that FDA initiate rulemaking to amend paragraph (e) of this section to remove an essential use. FDA may initiate notice-and-comment rulemaking to remove an essential use on its own initiative or in response to a petition, if granted. If the petition is to remove an essential use from paragraph (e) of

this section, the petitioner must submit compelling evidence of any one of the following criteria:

(1) The product using an ODS is no longer being marketed; or

(2) After January 1, 2005, FDA determines that the product using an ODS no longer meets the criteria in paragraph (f) of this section after consultation with a relevant advisory committee(s) and after an open public meeting; or

(3) For individual active moieties marketed as ODS products and represented by one new drug application (NDA):

(i) At least one non-ODS product with the same active moiety is marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use as the ODS product containing that active moiety;

(ii) Supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need;

(iii) Adequate U.S. postmarketing use data is available for the non-ODS product(s); and

(iv) Patients who medically required the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products; or

(4) For individual active moieties marketed as ODS products and represented by two or more NDAs:

(i) At least two non-ODS products that contain the same active moiety are being marketed with the same route of delivery, for the same indication, and with approximately the same level of convenience of use as the ODS products; and

(ii) The requirements of paragraphs (g)(3)(ii), (g)(3)(iii), and (g)(3)(iv) of this section are met.

[67 FR 48384, July 24, 2002]

PART 3—PRODUCT JURISDICTION

Subpart A—Assignment of Agency Component for Review of Premarket Applications

Sec.

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Subpart B [Reserved]

AUTHORITY: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c-360f, 360h-360j, 360gg-360ss, 371(a), 379e, 381, 394; 42 U.S.C. 216, 262.

SOURCE: 56 FR 58756, Nov. 21, 1991, unless otherwise noted.

Subpart A—Assignment of Agency Component for Review of Premarket Applications

§3.1 Purpose.

This regulation relates to agency management and organization and has two purposes. The first is to implement section 503(g) of the act, as added by section 16 of the Safe Medical Devices Act of 1990 (Public Law 101-629) and amended by section 204 of the Medical Device User Fee and Modernization Act of 2002 (Public Law 107-250), by specifying how FDA will determine the organizational component within FDA designated to have primary jurisdiction for the premarket review and regulation of products that are comprised of any combination of a drug and a device; a device and a biological; a biological and a drug; or a drug, a device and a biological. This determination will eliminate, in most cases, the need to receive approvals from more than one FDA component for such combination products. The second purpose of this regulation is to enhance the efficiency of agency management and operations by providing procedures for determining which agency component will have primary jurisdiction for any drug, device, or biological product where such jurisdiction is unclear or in dispute. Nothing in this section prevents FDA from using any agency resources it deems necessary to ensure adequate review of the safety and effectiveness of any product, or the substan-

tial equivalence of any device to a predicate device.

[56 FR 58756, Nov. 21, 1991, as amended by 68 FR 37077, June 23, 2003]

§3.2 Definitions.

For the purpose of this part:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act.

(b) *Agency component* means the Center for Biologics Evaluation and Research, the Center for Devices and Radiological Health, the Center for Drug Evaluation and Research, or alternative organizational component of the agency.

(c) *Applicant* means any person who submits or plans to submit an application to the Food and Drug Administration for premarket review. For purposes of this section, the terms “sponsor” and “applicant” have the same meaning.

(d) *Biological product* has the meaning given the term in section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)).

(e) *Combination product* includes:

(1) A product comprised of two or more regulated components, i.e., drug/device, biologic/device, drug/biologic, or drug/device/biologic, that are physically, chemically, or otherwise combined or mixed and produced as a single entity;

(2) Two or more separate products packaged together in a single package or as a unit and comprised of drug and device products, device and biological products, or biological and drug products;

(3) A drug, device, or biological product packaged separately that according to its investigational plan or proposed labeling is intended for use only with an approved individually specified drug, device, or biological product where both are required to achieve the intended use, indication, or effect and where upon approval of the proposed product the labeling of the approved product would need to be changed, e.g., to reflect a change in intended use, dosage form, strength, route of administration, or significant change in dose; or

(4) Any investigational drug, device, or biological product packaged separately that according to its proposed